

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

**UNITED STATES OF AMERICA, *ex rel.*
MICHAEL K. DRAKEFORD, M.D.,**

Plaintiff,

v.

**TUOMEY HEALTHCARE SYSTEM, INC.,
Defendant.**

CA No.: 3:05-CV-02858-MJP

**DEFENDANT'S
MOTION FOR
SUMMARY JUDGMENT AND
PARTIAL SUMMARY
JUDGMENT**

Defendant Tuomey Healthcare System, Inc., ("Tuomey") by its undersigned attorneys, hereby moves for summary judgment pursuant to Fed. R. Civ. P. 56, stating in support thereof the following:

1. The employment contracts between certain Tuomey subsidiaries and physicians on Tuomey's medical staff which the Government claims violate the "Stark Law" do not constitute direct or indirect financial relationships between Tuomey and those physicians so the Stark Law does not apply.
2. As to the contracts with the general surgeons and OB/GYN's, the Government's expert has conceded that those physicians were in fact paid fair market ranges. There being no material dispute as to whether the other elements of the applicable STARK exceptions apply, Tuomey is entitled to partial summary judgment with respect to the Government's contentions that those contracts violate the STARK law.
3. Tuomey was following the advice of its attorneys when said employment contracts were entered into and therefore entitled to summary judgment.
4. Tuomey has not submitted any claims for payment from the Government with knowledge that such claims were false or with reckless disregard or deliberate ignorance of falsity, and thus has not violated the False Claims Act.

5. Tuomey is entitled to summary judgment for the Payment Under Mistake of Fact, Unjust Enrichment and Disgorgement, and Constructive Trust and Accounting causes of action because they are based on the Government's allegation of a predicate Stark violation. Additionally Tuomey is entitled to summary judgment against Dr. Drakeford as to these causes of action due to his lack of standing.
6. The Government has failed to state a claim for which relief can be granted.
7. The pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, demonstrate no genuine issue as to any material fact.
8. Tuomey is entitled to summary judgment as a matter of law.

WHEREFORE, for the reasons stated above, as more fully explained in Tuomey's Memorandum in Support of this Motion, it is respectfully requested that this Motion be granted, that summary judgment be entered in favor of Tuomey, and that the Government's Second Amended Complaint be dismissed, with prejudice.

Respectfully submitted,

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